

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 DISTRICT OF NEVADA
7

8 ANTHONY MICHAEL GIOIOSA, SR.,
9 Plaintiff(s),

Case No. 2:21-cv-00700-JAD-NJK

10 v.

ORDER

[Docket Nos. 6, 7]

11 NEVADA DEPARTMENT OF BUSINESS
12 BUREAU, et al.,
Defendant(s).

13 On June 9, 2021, the undersigned issued a report and recommendation that the case be
14 dismissed for Plaintiff's failure to timely file a complaint and an application to proceed *in forma*
15 *pauperis*. Docket No. 6. On June 10, 2021, Plaintiff filed a complaint and an application to
16 proceed *in forma pauperis*. Docket No. 7. Although Plaintiff's filing was untimely, the Court will
17 **WITHDRAW** the report and recommendation.¹

18 Plaintiff's application to proceed *in forma pauperis* is incomplete, outdated, and confusing.
19 Most significantly, Plaintiff identifies a variety of sources of income, including through
20 employment, but refuses to identify the amount of money at issue for each. *See* Docket No. 7 at
21 1-2. Moreover, the acknowledgment and financial certificate appear to be outdated documents
22 related to a different, habeas action. *See id.* at 3-4.² Accordingly, Plaintiff's application to proceed
23 *in forma pauperis* is **DENIED** without prejudice. The Clerk of the Court shall send Plaintiff the
24

25 ¹ The Court expects strict compliance with all deadlines moving forward.

26 ² The amount of the partial filing fee for prisoners differs depending on whether the case
27 is a civil rights action or a habeas petition. It would appear from the paperwork presented that a
28 partial filing fee may be \$12.70, with monthly payments to be made thereafter until the full filing
fee has been paid. Given the other deficiencies with the application to proceed *in forma pauperis*,
however, the Court declines to proceed to the partial payment stage at this juncture.

1 approved form application to proceed *in forma pauperis* by a prisoner, as well as the document
2 entitled information and instructions for filing an *in forma pauperis* application. Plaintiff must file
3 an amended application to proceed *in forma pauperis* by July 29, 2021. Failure to do so will result
4 in a recommendation to the District Judge that the case be dismissed.

5 Lastly, the Court notes for Plaintiff that proceeding with this case will result in payments
6 drawn from his prison accounts until the full filing fee has been satisfied even if he cannot state a
7 claim for relief. The Court has not yet screened Plaintiff's complaint given the threshold defects
8 in the application to proceed *in forma pauperis*, but a cursory review of the complaint appears to
9 show that it is unlikely to survive the screening process. Plaintiff may want to consider whether it
10 is better to voluntarily dismiss his claims at this stage to avoid payment of the filing fee amount.

11 Accordingly, the Court orders as follows:

- 12 • The report and recommendation (Docket No. 6) is **WITHDRAWN**;
- 13 • Plaintiff's application to proceed *in forma pauperis* (Docket No. 7) is **DENIED** without
14 prejudice;
- 15 • To the extent Plaintiff wishes to proceed on with this case, Plaintiff is **ORDERED** to
16 file an amended application to proceed *in forma pauperis* by July 29, 2021; and
- 17 • The Clerk of the Court is **INSTRUCTED** to send Plaintiff the approved form
18 application to proceed *in forma pauperis* by a prisoner, as well as the document entitled
19 information and instructions for filing an *in forma pauperis* application.

20 IT IS SO ORDERED.

21 Dated: June 29, 2021

22 
23 _____
24 Nancy J. Koppe
25 United States Magistrate Judge
26
27
28